COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

**IN REPLY PLEASE
REFER TO OUR FILE**

January 14, 2004

VIA ELECTRONIC MAIL

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC

Re: *Order on Remand, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order at* CC Docket No. 96-45 ; **INITIAL COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dear Ms. Dortch:

Enclosed for filing with the Commission are Initial Comments of the Pennsylvania Public Utility Commission in the above-captioned proceeding. Please acknowledge receipt and acceptance of this filing via electronic medium.

If you have any questions concerning this filing, please direct them to me.

Very truly yours,

Elizabeth H. Barnes
Assistant Counsel

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION'S INITIAL COMMENTS

The Pennsylvania Public Utility Commission ("PaPUC") hereby respectfully submits these Initial Comments in response to the Commission's *Order on Remand, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order* (FNPRM) entered on October 27, 2003, at CC Docket No. 96-45

Rate Review and Expanded Certification Process

In the FNPRM, the FCC, in response to the decision of the United States Court of Appeals for the Tenth Circuit and the recommendations of the Federal-State Joint Board on Universal Service modified the federal high-cost universal service support mechanism for non-rural carriers and adopted measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers. The FCC is proposing a new cost benchmark at two standard deviations above the national average cost ($40.85). The FCC asks if two standard deviations is an appropriate threshold for this purpose of targeting Federal support to wire centers in qualifying states with forward looking costs per line exceeding a benchmark of two standard deviations from the average cost per line among all non-rural carrier wire centers nationwide. The FCC seeks comment on what percentage of costs in excess of the benchmarks (standard) should be supported for purposes of additional targeted Federal support, i.e. 5% or 10% of the costs in excess.

As Pennsylvania is now a net-contributor to the Federal Universal Service Fund, any mechanism which would serve to increase the amount of monies needed to support universal service objectives nationwide, thus increasing the size of the Fund and the amount Pennsylvanian ratepayers contribute to the Fund would be detrimental to Pennsylvania ratepayers.

The amount of support to each state is determined by comparing the statewide average cost per line, estimated by the FCC's forward-looking cost model, to a nationwide cost benchmark for the national average cost (the benchmark is two standard deviations above the national average cost per line). According to the FCC, at ft. note 312, page 51 of its Order, 96 percent of urban rates will fall within the standard. Only 4% of rates will fall outside of it. If only 4% of the rates are higher than this standard, this calls into question the need for additional federal subsidies for carriers with costs over the new benchmark. Federal support is provided to these non-rural carriers in states with costs that exceed the benchmark. For the year 2002, eight states received $233 million in support. Pennsylvania was not one of the recipient states in 2002 or 2003.

The PaPUC is concerned about the fact that a majority of the funding flows to a limited number of states. The purpose of Section 254 is to establish mechanisms to provide funding for carriers to utilize “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 U.S.C. §254(e). Section 254 of TA-96 requires the FCC to adopt a Federal universal service support mechanism that is designed to provide a level of funding that is “sufficient” to achieve this purpose. *Id*. at §254(b), (d),(e). Previously, when interpreting Section 254’s sufficiency requirement and while recognizing that the term “sufficient” requires that any funding mechanism produce enough support to achieve the purposes of section 254, the FCC held that support is “not to be any larger than is necessary to achieve the various goals of section 254.” Funding in excess of that required to fulfill the purposes of section 254 would unnecessarily and unreasonably increase the burden on all contributors to Federal universal service funding mechanisms. The imposition of such an unnecessary monetary burden on fund contributors would also unnecessarily reduce the demand for other telecommunications services because the monetary burden would increase the cost to consumers of obtaining all telecommunications services. Excessive funding would enable the carriers providing the supported services to use the excess to offset inefficient operations and for purposes other than “the provision, maintenance, and upgrading of facilities and services for which the support is intended.”

Further, the FNPRM sets forth an additional supplemental process for rate comparison. Even though a forward-looking cost model is supposed to be employed in analyzing the costs, the FNPRM recommends adopting a new and vaguely defined supplemental mechanism whereby states seeking additional federal support will be required to provide a rate analysis and will have great flexibility in demonstrating that rates are not reasonably comparable. A rate-based analysis that relies on local rates which are typically based on embedded costs is inappropriate given that the FCC has employed a forward-looking cost model. Any methodology using embedded costs should be rejected because embedded-cost support systems promote inefficient investment and inhibit competitive entry. Embedded costs provide no incentive for competitive measures as long as a carrier is enjoying revenues it enjoyed pre-competition.

State Implementation of "explicit universal service mechanisms"

The FCC proposes making additional Federal support available for high-cost wire centers in states that implement "explicit universal service mechanisms." The PaPUC is unclear as to what is meant by this phrase. We request clarification as to the meaning of the word "explicit" as a line-item surcharge on the customer's bill. The PaPUC is concerned that Pennsylvania wire centers would not qualify for additional funding under the FCC's proposed definition. Other states that do qualify would serve to increase the size of the Fund, and Pennsylvania ratepayers would continue to be a net contributor.

Conclusion

In summary, the PaPUC asks the FCC to explain in detail what is meant by "explicit universal service mechanisms." Further, the PaPUC objects to any proposal to increase the size and spending of the non-rural high cost Fund as none of Pennsylvania's non-rural carriers qualify or receive support from this Fund. The PaPUC is concerned that the bulk of the funding flows to a limited number of states, not including Pennsylvania. The national wireline phone penetration rate is over 95% according to the FCC's Order. Thus, it appears the intent of the Act, to have universal service across the nation is happening now without expanding the Fund size.

Respectfully submitted,

Pennsylvania Public Utility Commission

____

Elizabeth H. Barnes
Assistant Counsel

Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-5408

Dated: January 14, 2004